2025:PHHC:133932

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Second Appeal Order No. 45 of 2025 (O&M)
Reserved On: 19.09.2025
Date of Decision: 24.09.2025

Cosmo Propbuild Pvt. Ltd., New Delhi
and others

..... Appellants

Versus

MGF Developments Ltd., New Delhi
and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Argued By:- Dr. Abhishek Manu Singhvi, Senior Advocate (Through V.C.)
Mr. Randeep Singh Rai, Senior Advocate,
Mr. Aashish Chopra, Senior Advocate, assisted by
Ms. Rupa Pathania, Advocate
Ms. Rubina Virmani, Advocate
Mr. Varun Aryan Sharma, Advocate and
Mr. Ajay Kalra, Advocate
for the appellants-defendant Nos. 1 to 7.

Mr. Sanjeev Sharma, Senior Advocate, assisted by
Mr. Amandeep Talwar, Advocate and
Mr. Jugansh Goyal, Advocate
for contesting respondent No. 1-plaintiff.

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HARKESH MANUJA, J.

CM-15777-CII-2025

Application is **allowed**, as prayed for, subject to all just exceptions. Exemption from filing the certified / true typed copies of order dated 28.05.2025 alongwith annexures, is granted.

MAIN CASE

The appellants-defendant Nos. 1 to 7, by way of present appeal filed under Order XLIII Rule 1 (u) of the Code of Civil Procedure, 1908 **(for brevity "CPC")** pray for setting aside of an order dated 28.05.2025 passed by the Court of Additional District Judge, Gurugram **(hereinafter referred to as "First Appellate Court")**, whereby an appeal

preferred at the instance of contesting respondent No. 1-plaintiff against an order dated 27.05.2024 passed by the learned Civil Judge (Senior Division), Gurugram **(hereinafter referred to as "trial Court")** has been allowed, thereby resulting into dismissal of their application filed under Order VII Rule 11 of CPC for rejection of plaint.

[2] For the sake of convenience, the parties shall be referred to in the same status as was given to them by the learned trial Court.

FACTS

[3] Briefly stating, facts of the case are that in the year 2005, respondent No. 1-plaintiff (MGF Developments Ltd., New Delhi) entered into a joint venture with EMAAR Properties PJSC with the name of EMAAR MGF Land Private Ltd., which was later changed to EMAAR MGF Land Ltd. During subsistence of joint venture, it acquired various parcels of land either in its own name or through its hundred per cent (100%) owned subsidiary companies. The 31.12 acres of land in Village Chauma, Tehsil & District Gurugram was purchased through three of its subsidiaries, namely, M/s. Sparsh Promoters Private Limited, M/s. Sandesh Buildcon Private Limited and Sidhant Buildcon Private Limited **(hereinafter referred to as "Landowning Companies")**. In the year 2016, negotiations commenced between the Landowning Companies and defendant Nos. 1 to 5 regarding exchange of aforementioned 31.12 acres of land against 15.12 acres of land situated in the revenue estate of Village Mohammedpur Gujjar, Tehsil Sohna, District Gurugram which were owned by defendant Nos. 1 to 5.

[3.1] As an offshoot of the afore-stated negotiations, a civil suit for declaration and permanent injunction bearing CS-2536-2016 / dated 18.11.2016 (Annexure A-1), titled ***"Sparsh Promoters Private Limited and others Versus Cosmo Propbuild Private Limited and others"***

against defendant Nos. 1 to 5 came to be filed by the Landowning Companies with the following prayer clause (Page No. 216 of the paper-book):-

> *" It is, therefore, humbly prayed that in the interest of Justice your honour may very kindly be pleased to pass a decree for declaration in favour of the plaintiffs and against the defendants to the effect that till date no concluded transaction of exchange has taken place between the parties; that the transaction of exchange shall-be subject to terms and conditions as mentioned in paragraphs 10B to 10 of the plaint with consequential relief of permanent injunction in favour of plaintiffs and against defendants restraining the defendants from alienating the land holdings mentioned in paragraph no.4 of the plaint and fully described in schedule appended to the plaint as Annexure 4 situated in revenue estate of Chauma, Tehsil and District Gurgaon, creating any encumbrances over the same and from creating any third party rights of any nature in respect of aforesaid land holdings. The defendants may further very kindly be restrained from making any representation to the public at large with regard to their competence, capability and capacity to transfer valid and marketable title and/or td deliver possession in respect of aforesaid landholdings. Any other relief which this honourable court deems appropriate and suitable may also very kindly be granted to the plaintiffs. Costs of the suit may also very kindly be awarded to the plaintiffs. "*

[3.2] During the pendency of the suit, a compromise dated 23.11.2016 (Annexure A-2) was reached between the parties to the suit. As per the compromise, the Landowning Companies were to offer defendant Nos. 1 to 5 land measuring 31.0625 acres situated in the revenue estate of Village Chauma, Tehsil & District Gurugram in exchange and in turn, defendant Nos. 1 to 5 were to transfer their 15.12 acres of land situated in the revenue estate of Village Mohammadpur Gujjar, Tehsil Sohna, District Gurugram. In addition to the land, defendant Nos. 1 to 5 agreed to pay a sum of Rs.114,00,00,000/- (One Hundred Fourteen Crores

only) to the Landowning Companies through post dated cheques amounting to Rs.96,68,83,585/- (Ninety-Six Crores Sixty-Eight Lakh Eighty-Three Thousand Five Hundred Eighty-Five only) in addition to Rs.16,30,03,539/- (Sixteen Crores Thirty Lakh Three Thousand Five Hundred Thirty-Nine only) paid at the time of compromise. Relevant Clause Nos. 7, 9, 12, 13, 15, 17, & 18 of the said compromise are extracted hereunder (Page Nos. 225-230 of the paper-book):-

> *" 1 to 6. Xxxxx*
>
> *7. That the payment of consideration by way of Cheque(s) referred to above is being accepted by the plaintiffs subject to encashment of the Cheque(s) on their presentation by the plaintiffs into their Bank on their due dates. The aforesaid cheque(s) have been issued by the defendants in discharge of their financial obligations. In case of dishonor of the Cheque(s) for any reasons) whatsoever other than due to insufficiency of funds, attributable to the defendants, the plaintiffs shall intimate the defendants in writing and the defendants shall within 2 working days from the receipt of me same, pay the amount of the dishonored cheque by way of PO/DD or electronic transfer, failing which the said Exchange Deed(s) (Annexure A to Annexure D) shall automatically stand, terminated for all intents and purposes. purposes.* ***However in case of dishonor of the Cheques(s) due to insufficiency of funds, the said Exchange Deed(s) (Annexure A to Annexure D) shall automatically stand terminated for all intents and purposes without any recourse to notice. The parties in such event shall not be left with any right, title or interest of any nature in the land received exchange****.*
>
> *8. Xxxxx*
>
> *9.* ***That it has been specifically agreed between the parties and has also been mentioned in the Exchange Deed(s) (Annexure A to Annexure D) referred to above that the exchange deeds would only assume validity upon encashment of cheques issued by the defendants in favour of the plaintiffs upon presentation****.*
>
> *10 & 11 Xxxxx*
>
> *12.* ***That the intention of the parties from the very inception has***

been to exchange the land Holdings described above in their entirety and not in piecemeal*. The parties are aware that in case any of the cheques mentioned in the aforesaid Exchange Deed(s) (Annexure A to Annexure D) get dishonoured, in that event some of the aforesaid Exchange Deed(s) may assume validity while the others would be rendered invalid.*

13. *That save as provided in para 7 hereinabove, in case any of the cheque(s) mentioned in any of the Exchange. Deed(s) (Annexure A to Annexure D) referred to above is dishonoured upon presentation for encashment on account of inadequacy of funds in the bank account(s) of the constituents of the defendants or for any Other reason attributable to the constituents of the defendants, in that event all the Exchange Deed(s) (Annexure A to Annexure D) referred above/consequent mutations/ documents shall be rendered null, void and inoperative regardless of encashment of any other number of cheques mentioned in the aforesaid Exchange Deed(s) (Annexure A to Annexure D).*
14. *Xxxxx*
15. *That till such time all the cheques mentioned in the Exchange Deed(s) (Annexure A to Annexure D) referred to above are duly encashed, the defendants shall not be entitled to create any third party rights of any nature in respect of land holdings received in exchange.*
16. *Xxxxx*
17. ***That it is the specific condition of this compromise that in the event of dishonour of any of the cheque(s)/non-payment by the defendants as mentioned in para 7 hereinabove, the plaintiffs would be under no obligation to institute any litigation against the defendants for seeking any declaration to the effect that the exchange deeds appended to this compromise as Annexures A to D are void ab initio, non-est, nullity, illegal and not binding on the plaintiffs****. In fact, it is an integral- condition of this 'compromise that in the event of dishonour of any of the cheque (s) issued by the defendants to the of monetary plaintiffs towards payment consideration/non-payment by the defendants as mentioned in para 7 hereinabove, the exchange deeds (Annexure A to Annexure D) would be ipso facto rendered null and void without*

there being any requirement for any party to take legal recourse and/or to institute any litigation in court of law.

18. *That the defendants have got absolutely no objection if the suit filed by the plaintiffs is decreed in terms of this compromise. The defendants are conscious and aware of the fact that the exchange deeds-appended to this compromise as Annexures A to E have been executed and shall be registered in their favour in terms of this compromise. Accordingly; in the event of dishonour of any of the cheque(s) mentioned in the exchange deeds referred to above, all exchange deeds (Annexure A to Annexure D) and consequent mutations shall be ipso facto rendered null and void and the plaintiffs (if required) shall be entitled to get the decree passed in terms of this compromise executed forthwith. The plaintiffs shall not be obliged to institute any litigation separately in court of law for the purpose of seeking any declaration.*
19. *Xxxxx* ”

[3.3] In pursuance to the aforementioned compromise dated 23.11.2016, five exchange deeds were executed between the parties on 23.11.2016 (Annexures A-3 to A-7). These exchange deeds mention the amount paid at the time of execution and provide details of the fourteen post-dated cheques dated 26.03.2017. The exchange deeds were got registered on 24.03.2017. Relevant portion from para-3 of one of the exchange deeds dated 23.11.2016 (Annexure A-3 is extracted hereunder (Page Nos.242-243 of the paper-book):-

> *“ ……..*
>
> *The both parties shall subject to encashment of post dated cheque(s) only become full-fledged legal and lawful owners of ‘Schedule-A Land’ and ‘Schedule-B Land’ alongwith all rights appurtenant thereto respectively in terms of exchange subject matter of this Deed.”*

[3.4] On the basis of above five exchange deeds, separate mutations dated 07.12.2016 (Annexure A-8) were entered. Subsequently,

learned Presiding Officer, Daily Lok Adalat-cum-Civil Judge (Junior Division), Gurugram, passed an Award dated 09.12.2016 (Annexure A-9) and disposed off the ***Civil Suit No. 2536 of 2016***, titled ***"Sparsh Promoters Private Limited and others Versus M/s. Cosmo Propbuild Private Limited and others"*** based on the compromise dated 23.11.2016; making it as part of the award.

[3.5] On 26.07.2017, the afore-stated fourteen post-date cheques dated 26.03.2017 were replaced with issuance of fresh cheques dated 26.07.2017 in favour of the Landowning Companies by defendant Nos. 1 to 5. Subsequently, again fresh cheques were issued on 31.12.2017 replacing the earlier cheques dated 26.07.2017.

[3.6] In the meanwhile, Demerger Scheme of Emaar MGF Land Limited was sanctioned / approved by the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi **(for short "NCLT")** vide its order dated 08.01.2018 (Annexure A-10) in Company Petition No. 689 of 2016. Consequently, the plaintiff claimed development rights over the subject land i.e. 31.12 acres situated within the revenue estate of Village Chauma, Tehsil & District Gurugram.

[3.7] On 27.03.2018, the fourteen post-dated cheques dated 31.12.2017 issued by defendant Nos. 1 to 5 in favour of Landowning Companies were dishonoured. In response, notice dated 28.03.2018 was issued to defendant Nos. 1 to 5 regarding the five exchange deeds dated 23.11.2016 having become non-effective and also about forfeiture of the amount earlier paid there-under. However, the factum of its receipt was disputed by defendant Nos. 1 to 6 in their application (Annexure A-15), which was filed under Order VII Rule 11 of CPC with the following averments in para-15 thereof (Page No. 478 of the paper-book):-

> *"15. That on 02.04.2018, defendants no. 1 to 5 received 14 speed post and courier parcels which were sealed and sent on behalf of Siddhant Buildoon Pvt Ltd, Sandesh Buildcon Pvt Ltd and Sprash Promoters Pvt Ltd. When some of these envelopes were opened, officials of the defendants no. 1 to 5 were shocked to see some newspaper Magazines and blank papers in it. The officials of the defendants no. 1 to 5 called the officials of Siddhant Bulldcon Pvt Ltd, Sandesh Bulldcon Pvt Ltd and Sprash Promoters Pvt Ltd though they cleverly pleaded Ignorance. Sensing some foul play, the remaining envelopes were not opened and Immediately a complaint dated 03.04.2018 was given to Police, and a copy thereof is attached herewith. "*

[3.8] On 16.07.2018, the previous order dated 08.01.2018 was modified by the NCLT and the scheme was made effective from 30.09.2015.

[3.9] On 19.07.2021, defendant Nos. 1 to 6 applied for obtaining licence regarding land measuring 16.1125 acres including 4.53 acres that formed part of the exchange deeds dated 23.11.2016. Upon becoming aware of this fact, on 27.08.2021, objections were filed before the Town Planning Authorities, Haryana by the plaintiff against the application dated 19.07.2021.

[3.10] Simultaneously, ***CWP No. 25534 of 2021***, titled ***"MGF Developments Ltd. Versus State of Haryana and others"*** was filed by the plaintiff, to challenge the award dated 09.12.2016 passed by the Lok Adalat at Gurugram in Civil Suit No.2536 of 2016, titled as ***"M/s. Sparsh Promoters Pvt. Ltd. and others Versus M/s. Cosmo Propbuild Pvt. Ltd. and others"***. Initially, the parties were directed to maintain *status quo* in respect of the subject lands vide order dated 23.12.2021.

[3.11] In the meanwhile, a criminal complaint dated 12.12.2021 under Sections 148, 149, 447, 504 & 506 of IPC, 1860 was filed at the

instance of plaintiff against defendants No.1 to 5 at Police Station Bajghera, Gurugram. Subsequently, another complaint was filed before Economic Offences Wing (EOW), New Delhi on 10/11.12.2021. As a result, FIR No. 0047 dated 17.03.2022 under Sections 406, 409, 418, 420, 467 & 468 read with Sections 34 & 120-B of IPC was registered against defendants No.1 to 7 and its Directors.

[3.12] In response, one complaint under Section 156 (3) of the Code of Criminal Procedure, 1973 **(for brevity "Cr.P.C.")** was filed at the instance of defendant No.3 against the plaintiff on 30.12.2021 before the Court of learned Judicial Magistrate First Class, Gurugram, on whose orders FIR No. 002 of 2022 was registered against the plaintiff and its Director for the offences of cheating and forgery. Subseqeuntly, plaintiff filed CRM-M-2528-2022 before this Court, challenging the order of learned Judicial Magistrate First Class and also seeking quashing of the consequential FIR, wherein interim protection to the Directors of plaintiff was granted by this Court vide order dated 02.02.2022.

[3.13] On 19.04.2022, this Court disposed off the CWP No. 25534 of 2021, which was filed at the instance of plaintiff before this Court in relation to the Lok Adalat's Award dated 09.12.2016. Relevant para Nos. 37 to 41 thereof are extracted hereunder (Page Nos. 426 to 429 of the paper-book):-

> *"[37] Having heard the rival submissions made by learned Senior counsel for the parties, I find that the award dated 09.12.2016 is passed by the Daily Lok Adalat. This award has been passed by the Daily Lok Adalat presided by the Civil Judge (Jr. Divn.) Gurgaon, therefore, it has to be treated alike compromise decree under Order 23 Rule 3 CPC. It is also true that all questions are to be decided in the same suit as the decree is not amenable to appeal and thus fresh independent suit is barred.*

[38] Petitioner in terms of its pleadings has specifically acquiesced the factum of filing civil suit, execution of exchange deeds and compromise, incorporation of mutations in the revenue record, alleged misrepresentation of respondents. In view of above, it would remain debatable as to whether petitioner can espouse the cause at such a belated stage by moving an objection petition in the same proceeding. This Court would not comment upon the remedies which may be availed by the petitioner in accordance with law in future. Certainly qua this aspect, the petitioner cannot maintain the present petition being suffered with delay and latches and also the petitioner having acquiesced the subject matter of civil suit, exchange deed and compromise etc.

[39] The second limb of consideration is the proceedings before respondent No.2. In any case, petitioner is a necessary party in view of proceedings conducted before the National Company Law Tribunal, New Delhi and Scheme of Arrangement approved by the Tribunal in the context of steps to be taken by the parties for the implementation of the Scheme after its approval. The pending application under Section 231 of the Companies Act would be decided by the NCLT in accordance with law. It would be open to the petitioner to seek relief, if any available to it in terms of Section 232(4) to 232(7) of the Companies Act. Since the petitioner claims itself to be an aggrieved party, therefore, it was expected from respondent No.2 to provide adequate opportunity of hearing to the petitioner. Proceedings undertaken before respondent No.2 in the context of preponing the date of hearing from 24.02.2022 to 09.12.2021 unilaterally and thereafter making communication to the petitioner only on 08.12.2021 requiring petitioner to personally appear on 09.12.2021 need to be deprecated. The application for such preponement is not forthcoming except to see that it was done on the application of respondents No.7 to 11. It is because of this act of respondent No.2, petitioner became apprehensive and came to this Court. In my considered opinion, it was not reasonably expected from respondent No.2 to unilaterally prepone the date of hearing without issuing notice to the petitioner.

Preponement was done unilaterally and thereafter intimation was issued to the petitioner on 08.12.2021 to come present on 09.12.2021 to submit its case. Further one week's adjournment was given only on account of persuasion made by the petitioner. In any case, preponement of date of hearing from 24.02.2022 to 09.12.2021 was not justified.

[40] The apprehension shown by the petitioner would be squarely answered, if the pending proceedings in terms of change of land use are taken before some other competent officer of the respondent-Department. In case, respondent No.2 is the only defined authority, then the respondent No.1 can be asked to allocate the application for change of land use for ultimate processing before some other authority or respondent No.1 may itself take up the issue in accordance with law.

[41] In view of aforesaid observations, for the first limb of argument, the petitioner would be at liberty to avail its legal remedies in accordance with law. For the second limb of argument, respondent No.1 shall allocate the pending application to any other competent officer or may take up the issue itself in accordance with law. The present arrangement is being made in view of attending facts and circumstances of the present case without creating any such precedent for any other case. Let the needful be done by respondent No.1 within a period of two weeks."

[3.14] Subsequently, Review Application bearing RA-CW-73-2022 preferred against the order dated 19.04.2022 was also dismissed vide order dated 04.05.2022 (Annexure A-13) by the Writ Court.

[3.15] In the meanwhile, the plaintiff also filed an execution application based on the Lok Adalat Award dated 09.12.2016. However, simultaneously, Civil Suit No. 2886 of 2022 titled as '***MGF Developments Ltd. Versus Cosmo Probuild Pvt. Ltd. and others***', which is the subject matter of the present appeal, came to be filed before the Court of competent jurisdiction at Gurugram with the following prayer(s) (Page Nos. 464 to 466 of the paper-book):-

"PRAYER

In view of the aforesaid facts and circumstances and in the interest of justice, it is most humbly prayed that this Hon'ble Court may kindly be pleased to:

a) *Pass a decree of Permanent Injunction in favour of Plaintiff and against the Defendant no.1 to 7 including their Directors, successors, attorneys, representatives, assignees and/or nominees, from interfering in the peaceful possession of the Plaintiff over the land, as detailed in Schedule A of above para 13 of the Plaint and restraining them from claiming any rights under the Exchange Deeds, as described in para 13 of the plaint; and*

b) *Pass a decree of Permanent Injunction in favour of Plaintiff and against the Defendant no.1 to 7 including their Directors, successors, attorneys, representatives, assignees and/or nominees, restraining them from creating any third party rights in the subject property, as detailed in Schedule A of above para 13 of the Plaint;*

c) *Pass a decree of Permanent Injunction in favour of Plaintiff and against the Defendant no.8 to 11 or their delegated attorneys, representatives, assignees and/or nominees, from granting any License, permission, sanction on any part of the Land in the subject property, as detailed in Schedule A of above para 13 of the Plaint in favour of anybody other than the plaintiff;*

d) *Pass a decree of mandatory Injunction in favour of the Plaintiff and against the Defendant no.1 to 5, to act and/or desist from acting contrary to/beyond the terms of Compromise Agreement dated 23.11.2106, Exchange Deeds dated 23.11.2016 registered on 24.11.2014 (as described in para 13 of the Plaint) and Award dated 09.12.2016 passed in Civil Suit no. 2536 of 2016, titled as "Sparsh Promotes Pvt. Ltd. & Ors. Vs. Cosmo Propbuild Pvt. Ltd. & Ors. And decree passed thereon, on account of consequences due to non-performance and non-adherence on the part of Defendant nos. 1 to 5 to terms therein as regards payment of consideration;*

e) *Pass a decree of declaration in favour of the Plaintiff and against the Defendant no.1 to 5, to the effect of making*

the Defendant no.1 to 7 bound by the terms of Compromise Agreement dated 23.11.2016, Exchange Deeds dated 23.11.2016, registered on 24.11.2014 (as described in para 13 of the Plaint) and Award dated 09.12.2016 passed in Civil Suit no. 2536 of 2016, titled as "Sparsh Promoters Pvt. Ltd. & Ors. Vs. Cosmo Propbuild Pvt. Ltd. & Ors." and decree passed thereon, and that they are bound by the consequences arising out due to non-performance and non-adherence on the part of Defendant nos. 1 to 5 to tems therein e.g. dishonour of cheques furnished towards consideration of the Cheque; and

f) Without prejudice that as per the compromise decree, the Plaintiff is not obligated to secure such declaration as the Exchange Deeds have rendered null and void ab-initio as per the decree itself; a decree as an abundant caution, of declaration in favour of the Plaintiff and against the Defendant no.1 to 5 to the effect that the Defendant nos. 1 to 7 have no right remaining on any part of the Land in the subject property, as detailed in Schedule A of above para 13 of the Plaint and further that the Exchange Deeds dated 23.11.2016, registered on 24.11.2014 (as described in para 13 of the Plaint) and all mutations carried out in the revenue records and partition therefore are invalid, null and void;

g) Pass a decree of declaration to decree that all proceedings subsequent to the Compromise decree dated 09.12.2016 including application for grant of license by Defendant no.7 in collusion with Defendant nos. 1 to 6 are invalid, null and void;

h) Award cost of the proceedings; and

i) *Pass such other and further orders as the Hon'ble Court may deem fit and proper in the circumstances of the case in favour of the Plaintiff and against the Defendants."*

[3.16] Upon appearance, an application under Order VII Rule 11 read with Section 151 CPC was filed at the instance of defendant Nos. 1 to 6 for the rejection of plaint.

[3.17] In September 2022, reply to the application under Order VII Rule 11 of CPC was filed by the plaintiff, opposing the prayer made therein.

[3.18] In the meanwhile, on 24.08.2022, the execution petition preferred at the instance of plaintiff *qua* the award dated 09.12.2016 passed by the Lok Adalat at Gurugram was dismissed as not maintainable. Additionally, an application under Order XXIII Rule 3A of CPC (wrongly mentioned as Order XXIII Rule 3 of CPC therein) was also filed by the plaintiff before the trial Court in the first suit i.e. Civil Suit No. 2536 of 2016, titled as "***Sparsh Promoters Private Limited and others Versus Cosmo Propbuild Private Limited and others***" along with an application for grant of interim stay.

[3.19] On 13.10.2022, the learned trial Court disposed off the application (Annexure A-18) under Order XXXIX Rules 1 & 2 CPC, filed at the instance of plaintiff, in Civil Suit No.2536 of 2016, directing defendant Nos.1 to 5 to deposit the remaining amount against five (05) exchange deeds dated 23.11.2016 along with interest @ 6% per annum w.e.f. 01.01.2018. The learned Court also directed that the balance amount be deposited within one month and till then, defendant Nos. 1 to 5 were restrained from raising any construction over the land in question.

[3.20] On 15.10.2022, defendants No.1 to 5 placed on record the demand drafts regarding the remaining amount before the learned trial Court in accordance with the order dated 13.10.2022. As per order dated 02.11.2022 (Annexure A-20), the learned trial Court directed the said amount to be deposited with the Bank in the shape of FDRs.

[3.21] The aforementioned orders dated 13.10.2022, 15.10.2022 and 02.11.2022 were challenged at the instance of plaintiff before this Court vide CWP No. 26396 of 2022. However, the same was dismissed vide

order dated 09.12.2022 being not maintainable.

[3.22] Subsequently, the three Landowning Companies filed their applications before the learned trial Court in Civil Suit No. 2536 of 2016 for release of the FDRs. However, the said prayer was declined vide order dated 22.12.2022 (Annexure A-21).

[3.23] Subsequently, two separate Civil Revisions bearing CR No. 33 of 2023 and CR No. 858 of 2023, with the following details, were filed before this Court. However, those were dismissed vide common order dated 13.07.2023 (Annexure A-22).

i) CR No. 33 of 2023 filed by the Land Owning Companies challenging the non-release of FDRs deposited by defendant Nos. 1 to 5 before the learned trial Court in the first suit i.e. CS-2536-2016;

ii) CR No. 858 of 2023 filed by plaintiff herein, against an order dated 22.12.2022 passed in the application under Order 23 Rule 3A of CPC in Civil Suit No. 2536 of 2016; wherein prayer for setting aside of the award dated 09.12.2016 passed by Lok Adalat, Gurugram was declined.

The order dated 13.07.2023 passed in the abovementioned two civil revisions was upheld by the Hon'ble Apex Court vide order dated 06.02.2024 (Annexure A-27) passed in Special Leave to Appeal (C) No. 21462 of 2023 titled as "***MGF Developments Ltd. Versus Cosmo Propbuild Pvt. Ltd. and Ors."***

[3.24] In the meanwhile, application under Order XXXIX Rules 1 and 2 of CPC, filed at the instance of plaintiff in the second suit bearing Civil Suit No. 2886 of 2022, was dismissed by the learned trial Court on

16.10.2023 (Annexure A-23). However, the miscellaneous appeal filed against the order dated 16.10.2023 by the plaintiff came to be allowed by the Court of learned Additional District Judge, Gurugram on 05.04.2024 (Annexure A-29) while restraining defendant Nos.1 to 7 from transferring/alienating or creating third party rights in the suit property, besides restraining them from raising any sort of construction over the same.

[4] Soon thereafter on 27.05.2024, the application under Order VII Rule 11 of CPC filed at the instance of defendant Nos.1 to 6 was allowed by the learned trial Court thereby rejecting the plaint in Civil Suit No.2886 of 2022.

[5] Aggrieved thereof, first appeal was filed at the instance of plaintiff. The same was, however, dismissed being time barred by the Court of learned Additional District Judge, Gurugram vide order dated 13.01.2025 (Annexure A-31). The said order was impugned in RSA No.1086 of 2025 and the appeal was allowed vide decision dated 09.04.2025 (Annexure A-32) followed by dismissal of review therein (RA-RS-21 of 2025) by this Court vide order dated 24.04.2025 (Annexure A-33). Even the Special Leave to Appeal (Civil) Nos. 12455-12456 of 2025 preferred against the aforementioned decisions dated 09.04.2025 and 24.04.2025 was dismissed by the Hon'ble Apex court on 02.05.2025 (Annexure A-34).

[6] Finally, the first appeal preferred at the instance of plaintiff against rejection of its plaint in Civil Suit No. 2886 of 2022 was heard on merits and allowed vide order dated 28.05.2025, thereby rejecting the application under Order VII Rule 11 of CPC filed by defendant Nos. 1 to 6. Hence, the present appeal.

CONTENTIONS ON BEHALF OF THE APPELLANTS-DEFENDANT NOS. 1 TO 7

[7] Learned Senior Counsel appearing on behalf of the appellants submitted that as per paragraph Nos.3 to 9 of the plaint in Civil Suit No.2886 of 2022, as well as its prayer clause, the plaintiff never claimed itself to be owner of the subject properties; nor did it seek such declaration. No dealings / compromise was ever executed between the plaintiff-Company and defendant Nos.1 to 6, as all the transactions and consequence in terms of compromise dated 23.11.2016, in the shape of execution of five (05) exchange deeds dated 23.11.2016 and the passing of award dated 09.12.2016 by the Lok Adalat at Gurugram, took place between the Landowning Companies and defendant Nos.1 to 5. It was contended that the land under exchange was previously owned by the Landowning Companies; under the exchange deeds the post dated cheques were handed over to the Landowning Companies. Upon dishonour of those cheques, no proceedings were instituted was initiated by such Companies and therefore, the plaintiff was neither having *locus standi* nor cause of action to file or maintain this Civil Suit No. 2886 of 2022. Learned Senior Counsel **also pointed out** that once the Landowning Companies were praying for release of the remaining amount deposited by defendant Nos. 1 to 5 before the trial Court on 15.10.2022, no cause of action remained with the plaintiff which was neither a party to the compromise dated 23.11.2016; five exchange deeds dated 23.11.2016 or even the award dated 09.12.2016 passed by the Lok Adalat, Gurugram.

[7.1] Learned Senior Counsel further contended that the contents of the plaint clearly indicated that the claim made in the suit was for grant of declaration in favour of respondent No. 1-plaintiff and against defendant Nos. 1 to 5 to the effect that the defendant Nos. 1 to 7 were bound by the

terms of compromise-agreement dated 23.11.2016; the exchange deeds dated 23.11.2016; the Lok Adalat's Award dated 09.12.2016 passed in Civil Suit No. 2536 of 2016 besides praying for declaring the exchange deeds qua the rights of plaintiff in the subject properties being illegal null and void on account of dishonour of cheques issued by defendant Nos. 1 to 5. Learned Senior Counsel **also submitted** that as per contents of para-35 read with the prayer clause of the plaint, the cause of action of respondent No. 1-plaintiff for filing of suit for declaration as prayed for accrued for the first time when the Landowning Companies negotiated with defendant Nos. 1 to 6 for the exchange of land. This was followed by further cause of action on the date of compromise dated 23.11.2016, the date of award passed by the Lok Adalat on 09.12.2016, upon dishonour of cheques on 27.03.2018, when the letter dated 28.03.2018 was issued by the authorized representative of Landowning Companies to defendant Nos. 1 to 6 informing them about dishonours of cheques, on 07.12.2016 when the mutations were sanctioned based on the exchange deeds, and finally in July 2021 when the plaintiff became aware that defendant Nos. 1 to 6 had conspired with defendant No. 7 by making an application for a license vide application No. LC-4572A dated 19.07.2021 for land measuring 16.1125 acres, including 4.53 acres of land forming part of the exchange deeds. Para-35 of the plaint being relevant is extracted hereunder (Page No. 460 of the paper-book):-

> *35. The. cause of action arose in favour of the Plaintiff and against the Defendants when the Plaintiff for and on behalf of land owning companies negotiated with the Defendant No.1 to 6 for exchange of lands and the land owning companies and Defendant No.1 to 5 executed Compromise Agreement dated 23.11.2016 as well as Exchange Deeds, The cause of action further arose when the said compromise agreement was taken in the proceedings of Civil Suit No. 2536 of 2016, titled as*

"Sparsh Promoters Pvt. Ltd. & Ors. vs. Cosmo Propbuild Pvt. Ltd. & Qrs." filed before Civil Judge Gurgaon, and accordingly, Award dated 09.12.2016 was passed by Daily Lok Adalat and decree passed thereon. The cause of action further arose in July 2017 and December 2017 when the Defendant No.1 to 5 replaced the cheques on two occasions, however, the said cheques were also dishonoured on 27.03.2018. The cause of action further arose on 28.03.2018, when Sh. Rakshit Jain as Authorised Representative of land owning companies, who is also the Director of the Plaintiff issued letters dated 28.03.2018 to the Defendant No.1 to 5 inter-alia, informing them about dishonour of cheques and termination/ cancellation of Exchange Deeds dated 23.11.2016. The cause of action further arose on 07.12.2016 when the Defendant Nos. 1 to 5 behind the back of the Plaintiff got mutations sanctioned on the subject property and also when they got the subject land partitioned. The cause of action further arose on 16.07.2018, when the Hon'ble National company Law Tribunal, New Delhi vide its order dated 16.07.2018 in Company Petition No. 689 of 2016 approved the Scheme of Arrangement of demerger of Emaar MGF Land Limited, and accordingly, rights, title and interest in lands measuring 31.12, acres situated at Village Chauma, Tehsil and District Gurugram vested in the Plaintiff w.e.f. 30.09.2018 The cause of action further arose in July 2021, when it came to the knowledge of the Plaintiff that the Defendant No.7 in connivance with-Defendant No.1 to 6 applied for license vide License Application LC 4572A dated 19.07.2021 on land measuring 16.1125 acres which includes land measuring 4.53 acres of the plaintiff, claiming themselves as the owners of the said land. The cause of action further arose when the Plaintiff filed its objections dated 27.08.2021 with Defendant No.8, inter-alia, praying for rejection of application of Defendant No.1 to 7 for grant of license qua the lands. The cause of action further arose when it came to the knowledge of the Plaintiff that the Defendant No.1 to 7, in connivance with each other and in criminal conspiracy and to play fraud upon the Plaintiff have undertaken various other steps to frustrate the legal rights and title of the Plaintiff on the land measuring 31.12 acres situated at Village Chauma, Tehsil and District Gurugram. It is submitted that Defendant No. 1 to 7

have purportedly partitioned the said property amongst themselves, not physically but on papers, and while relying upon the said forged and fabricated documents, the Defendant No.1 to 7 have malafidely got their name entered into the revenue records, by fraudulent and illegal means in order to cheat and dishonestly misappropriate the land owned by the Plaintiff. The cause of action further arose in 2021, when the Plaintiff flied a Civil Writ being CWP No.25534 of 2021 (O&M) before Hon'ble Punjab and Haryana High Court inter alla seeking issuance of an appropriate writ in the nature of certiorari for quashing the award dated 09.12.2016 passed by the Dally Lok Adalat along with all subsequent proceedings arising therefrom. The cause of actions further arose on 10.12.2021 when the Plaintiff filed Criminal Complaint before EOW, Delhi against the Defendant Nos. 1 to 6 and their Directors. The cause of action further arose when the Defendant No.1 to 7 illegally attempted to encroach upon the land of Plaintiff and a complaint dated 12.12.2021 to the said effect was filed by Plaintiff with the Police at Bajgehra, Gurugram under Sections 148, 149, 447, 504, 506 IPC, 1860. The cause of action further arose when the Hon'ble High Court passed an order of status quo in respect of the land of the Plaintiff on 23.12.2021. The cause of action further arose when the EOW, New Delhi has registered a FIR No. 0047 of 2022 dated 17.03.2022 for the offences punishable under section 406, 409, 418, 420, 467, and 468 read with Section 34 and 120B of Indian Penal Code, 1860 against the Defendant no.1 to 7 and its Directors. The cause of action further arose when the said writ was disposed by the Hon'ble High Court vide judgment dated 19.04.2022 with liberty to Plaintiff to avail legal remedies in accordance with law. The cause of action is continuing inasmuch as there is continuous threat upon the Plaintiff qua the illegal actions and misrepresentations being made by the Defendant no.1 to 7 in respect of land of the Plaintiff besides the Defendant no.1 to 7 have been making illegal attempts to encroach and create third party rights in the land. The cause of action is still continuing."

[7.2] Therefore, learned Senior Counsel thus submitted that the prayer for declaration made in the suit coupled with the injunction relief

was covered under Article 58 of the Schedule attached to the Limitation Act, 1963, which reads as under:-

" THE SCHEDULE
(PERIODS OF LIMITATION)
FIRST DIVISION—SUITS

Article	*Description of Suit*	*Period of Limitation*	*Time from which period begins to run*
58	*To obtain any other declaration*	*Three years*	*When the right to sue first accrues.*

Further, while referring to the term "when the right to sue first accrues", learned Senior Counsel submitted that the term "right to sue" and the "cause of action" were to be considered synonymous in the given facts as no distinction was drawn by the plaintiff in para-35 of the plaint about "cause of action" and "right to sue". He thus submitted that as per the contents of para-35 of the plaint, the right to sue for the first time accrued in favour of respondent No. 1-plaintiff on the day when the Landowning Companies commenced negotiations with defendant Nos. 1 to 5 for exchange of land, which occurred in the year 2016. Consequently, the suit for declaration filed on behalf of respondent No. 1-plaintiff in July 2022 which was beyond three years from that date, was clearly barred by limitation.

Additionally, learned Senior Counsel pointed out that the term "first accrues" used under Article 58 of the Schedule attached to the Limitation Act was a significant departure from the erstwhile Limitation Act, 1908 which prescribed limitation period for suit seeking declaration for various purposes, as used in Article 58. In support, learned Senior Counsel placed reliance upon the three decision(s) rendered by the Hon'ble Supreme Court, as under:-

(a) **Special Leave Petition No. 13459 of 2024, titled "Nikhila Divyang Mehta Anr. <u>Versus</u> Hitesh P. Sanghvi & Ors.**,

decision dated **15.04.2025**; relevant paras-19, 20 & 25 thereof are extracted hereunder:-

> *19. The relief of declaration claimed in the suit at hand does not fall under Articles 56 and 57 and, therefore, by necessary implication, Article 58 would stand attracted which provides for a limitation period of three years to obtain any other declaration other than that mentioned under Articles 56 and 57. It provides that for such a declaration, the limitation is three years from the date when the right to sue first accrues.*
>
> *20. The use of the words "when the right to sue first accrues" as mentioned in Article 58 is very relevant and important. It categorically provides that the limitation of three years has to be counted from the date when the right to sue first accrues.*
>
> *21 to 24 XXXXXX*
>
> *25. Section 3 of the Act contemplates that every suit instituted after the period prescribed under the Act shall be dismissed even if limitation has not been set up as a defence. The aforesaid provision is of a mandatory nature and cannot be ignored by the courts even if not pleaded or argued by the defence. It is obligatory upon the court to dismiss the suit if it is, on the face of it, barred by limitation. The aforesaid provision has been enacted for public good and to give quietus to a remedy after lapse of a particular period, as a matter of public policy, though without extinguishing the right in certain cases. Therefore, once a limitation prescribed for instituting a cause of action expires and even if limitation is not set up as a defence, it obliges the court to dismiss the suit as barred by limitation."*

(b) **Shakti Bhog Food Industries Ltd. Versus Central Bank of India, 2020 (17) SCC 260**; relevant paras-17 & 18 thereof are extracted hereunder:-

> *17. The expression used in Article 113 of the 1963 Act is "when the right to sue accrues", which is markedly distinct from the expression used in other Articles in First*

Division of the Schedule dealing with suits, which unambiguously refer to the happening of a specified event. Whereas, Article 113 being a residuary clause and which has been invoked by all the three Courts in this case, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue.

18. Concededly, the expression used in Article 113 is distinct from the expressions used in other Articles in the First Division dealing with suits such as Article 58 (when the right to sue "first" accrues), Article 59 (when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded "first" become known to him) and Article 104 (when the plaintiff is "first" refused the enjoyment of the right). The view taken by the trial Court, which commended to the first appellate Court and the High Court in second appeal, would inevitably entail in reading the expression in Article 113 as – when the right to sue (first) accrues. This would be rewriting of that provision and doing violence to the legislative intent. We must assume that the Parliament was conscious of the distinction between the provisions referred to above and had advisedly used generic expression "when the right to sue accrues" in Article 113 of the 1963 Act. Inasmuch as, it would also cover cases falling under Section 22 of the 1963 Act, to wit, continuing breaches and torts.

(c) **Civil Appeal No. 1525 of 2023**, titled "**Indian Evangelical Lutheran Church Trust Association <u>Versus</u> Sri Bala & Co.,** decided on **08.01.2025**; relevant portion from para-9.8 thereof is extracted hereunder:-

9.8.…… When the right to sue accrues, depends, to a large extent on the facts and circumstances of a particular case keeping in view the relief sought. It accrues only when a cause of action arises and for a cause of action to arise, it must be clear that the averments in the plaint, if found correct, should lead to a successful issue. The use of the phrase "right to sue" is

synonymous with the phrase "cause of action" and would be in consonance when one uses the word "arises" or "accrues" with it. In the instant case, the right to sue first occurred in the year 1993 as the respondent/plaintiff had filed the first suit then, which is on the premise that it had a cause of action to do so. The said suit was filed within the period of limitation as per Article 54 of the Schedule to the Limitation Act."

[7.3] In the light of aforementioned discussion, it was thus submitted that once the suit was filed beyond the limitation period, and this fact was discernible from the bare perusal of the plaint, the same was liable to be rejected. In support of this argument, learned Senior Counsel placed reliance upon the judgment of the Hon'ble Supreme Court in ***case "Shri Mukund Bhavan Trust and Ors. Versus Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and another", 2024 SCC OnLine 3844***. Para-26 thereof being relevant is extracted hereunder:-

*" **26.** At this juncture, we wish to observe that we are not unmindful of the position of law that limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record. However, in cases like this, where it is glaring from the plaint averments that the suit is hopelessly barred by limitation, the Courts should not be hesitant in granting the relief and drive the parties back to the trial Court. We again place it on record that this is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the plaintiff. Rather, the plaintiff and his predecessors did not take any steps to assert their title and rights in time. The alleged cause of action is also found to be creation of fiction. However, the trial Court erroneously dismissed the application filed by the appellants under Order VII Rule 11(d) of CPC. The High Court also erred in affirming the same, keeping the question of limitation open to be considered by the trial Court after considering the evidence along with other issues, without deciding the core issue on the basis of the averments made by the Respondent No.1 in the*

> *Plaint as mandated by Order VII Rule 11 (d) of CPC. The spirit and intention of Order VII Rule 11(d) of CPC is only for the Courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process. The Courts by being reluctant only cause more harm to the defendants by forcing them to undergo the ordeal of leading evidence. Therefore, we hold that the plaint is liable to be rejected at the threshold."*

[7.4] Learned Senior Counsel further contended that the Civil Suit No. 2886 of 2022 filed at the instance of plaintiff was not maintainable in view of the specific bar under Order XXIII Rule 3-A of CPC. It was submitted that earlier CWP No. 25534 of 2021 preferred at the instance of plaintiff, laying challenge to the Lok Adalat Award dated 09.12.2016 passed in Civil Suit No. 2536 of 2016 titled as ***"M/s. Sparsh Promoters Private Limited and others Versus M/s. Cosmo Propbuild Private Limited and others"***, was dismissed by this Court vide order dated 19.04.2022 having observed that the issue about the validity of Lok Adalat's Award dated 09.12.2016, presided over by learned Civil Judge (Junior Division), Gurugram was a decree based on compromise in terms of Order XXIII Rule 3A of CPC. Consequently, all questions relating thereto were to be decided in the same suit by filing appropriate application under Order XXIII Rule 3-A of CPC. Any fresh independent suit in this regard was barred. Therefore, in the light of the observations made in para-37 & 38 of the order dated 19.04.2022, it was contended that a separate suit bearing Civil Suit No. 2886 of 2022 for declaration and permanent injunction, assailing the validity of Lok Adalat's Award dated 09.12.2016, was not maintainable. Reliance was placed upon decision of the Hon'ble Apex Court in case of ***"P.T. Thomas Versus Thomas Job"***, reported as ***2005 (6) SCC 478***. Relevant para-16 thereof is extracted hereunder:-

> *" **16.** In our opinion, the award of the Lok Adalat is fictionally deemed to be decree of Court and therefore the courts have all the powers in relation thereto as it has in relation to a decree passed by itself. This, in our opinion, includes the powers to extend time in appropriate cases. In our opinion, the award passed by the Lok Adalat is the decision of the court itself though arrived at by the simpler method of conciliation instead of the process of arguments in court. The effect is the same. In this connection, the High Court has failed to note that by the award what was put to an end was the appeal in the District Court and thereby the litigations between brothers forever. The view taken by the High Court, in our view, will totally defeat the object and purposes of the Legal Services Authorities Act, 1987 and render the decision of the Lok Adalat meaningless."*

[7.5] Learned Senior Counsel further emphasized that on the date of filing of Civil Suit No.2886 of 2022, the plaintiff even preferred execution application No. 126 of 2022, seeking enforcement of the Lok Adalat's Award dated 09.12.2016. However, this application was dismissed being not maintainable vide order dated 24.08.2022 (Annexure A-17) passed by the Court of learned Civil Judge (Junior Division), Gurugram.

Learned Senior Counsel also contended that the plaintiff even went on to prefer an application under Order XXIII Rule 3-A of CPC seeking recalling of the Award dated 09.12.2016 passed by the Lok Adalat, Gurugram. However, the trial Court vide its order dated 13.10.2022 dismissed the said application. The rejection thereof was challenged by the plaintiff before this Court initially by CWP No.26396 of 2022 which was dismissed on 09.12.2022 being not maintainable and later vide CR No. 858 of 2023 which again met the same fate and was dismissed by this Court on 13.07.2023. It was thus submitted that the plaintiff availed multiple remedies for challenging the compromise dated 23.11.2016; five exchange deeds dated 23.11.2016 and the award dated 09.12.2016 passed by the

Lok Adalat, Gurugram. However, all those proceedings were rejected. Consequently, the second Civil Suit No. 2886 of 2022 at the instance of plaintiff seeking the similar relief was not maintainable, and the plaint was thus liable to be rejected.

It was further contended that the prayer clause in the execution preferred at the instance of plaintiff, based on the Lok Adalat's Award dated 09.12.2016 and that in the second Civil Suit No.2886 of 2022, were more or less identical and thus, the Civil Suit No. 2886 of 2022 was in fact misuse of the process of law.

CONTENTIONS ON BEHALF OF RESPONDENT NO. 1-PLAINTIFF

[8] In response to the arguments presented on behalf of the appellants-defendant Nos. 1 to 7, Mr. Sanjeev Sharma, learned Senior Counsel representing respondent No. 1-plaintiff, relied upon the contents of the plaint. It was asserted that the Landowning Companies were hundred per cent (100%) subsidiaries of the EMAAR MGF Land Limited. By virtue of decisions dated 08.01.2018 / 16.07.2018 by the learned NCLT, the "Scheme of Arrangement" between the EMAAR MGF Land Limited and MGF Developments Limited (plaintiff) including their respective shareholders and creditors was finalized. As a result, all development rights relating to the subject land measuring 31.12 acres situated within the revenue estate of Village Chauma, Tehsil & District Gurugram were to devolve upon and vest with the resulting company i.e. plaintiff. Relevant clauses of the "Scheme of Arrangement" are extracted hereunder:-

> *"* *PART-I*
>
> *DEFINITIONS AND SHARE CAPITAL*
>
> *1. Definitions and Interpretation:*
>
> *Xxxxxxxxxxxx*
>
> *A. Assets*
>
> *(a) to (c) Xxxxxxxx*

*(d) all development rights relating to, in respect of, or connected with the land and all development rights in the projects comprised in the assets as set out in **Annexure 2**; in each case, together with advances / deposits made by the Demerged Company to its Subsidiaries or any other persons or third party/ies owning the land in respect of the assets, as set out in **Annexure 2**, including all monies applied by the Demerged Company towards accounting for such rights. It is understood that all of the assets, as set out in **Annexure 2**, shall be free and clear of all encumbrances and liens and that the Demerged Company shall take necessary steps to release the encumbrances/liens of such assets, if any, by December 31, 2016, except as otherwise agreed.*

XXXXXX

11. Mutual Co-operation for giving effect to the Scheme:

11.1 Demerged Company and the Resulting Company and their shareholders agree that, wherever required, in order to achieve the objectives stated in the Scheme, they shall cause the Demerged Company and/or its Subsidiaries and the Resulting Company to pass necessary resolutions and take actions in support of the Scheme. The order of the High Court shall be filed with the relevant Registrar of Companies by the Demerged Company and the Resulting Company within a period of thirty (30) days of the receipt of the order.

XXXXXX

Annexure 2: Schedule of properties

Details of the land parcels, the development rights of which are forming part of the Demerged Undertaking

State	*City*	*Village*	*Area in acres*
Xxxx	*Xxxx*	*Xxxx*	*Xxxx*
Haryana	***Gurgaon***	***Chouma***	***31.12***
Xxxx	*Xxxx*	*Xxxx*	*Xxxx* ”

In this regard, it was, thus, submitted that the development rights for the suit property situated within the revenue estate of Village Chauma, Tehsil & District Gurugram having been conferred upon the Resulting Company, the plaintiff was having both locus as well as cause to

file and maintain Civil Suit No. 2886 of 2022.

[8.1] Learned Senior Counsel argued that the suit for declaration as prayed for by respondent No. 1-plaintiff under Article 58 of the Schedule of Limitation Act was filed within the prescribed time frame. It was further asserted that the 'right to sue' in favour of respondent No. 1-plaintiff accrued only upon the infringement or at the very least upon a clear and unequivocal threat to infringe the right asserted in the suit. He thus submitted that the threat to infringe the right of respondent No. 1-plaintiff in the subject property became evident and unequivocal only when a part of the suit land measuring 4.53 acres was included by defendant Nos. 1 to 6 in their application dated 19.07.2021, before the Town Planning Authorities for the issuance of a license. Consequently, the suit filed thereafter in July 2022 was within the three years' period from the accrual of right to sue. In support, leaned Senior Counsel placed reliance upon a decision rendered by the Hon'ble Supreme Court in case ***"Daya Singh & Anr. Versus Gurdev Singh (Dead) by LRs & Ors."***, reported as ***2010 (2) SCC 194***.

[8.2] Learned Senior Counsel further contended that the plea raised on behalf of the appellants-defendants regarding the Civil Suit No.2886 of 2022 being not maintainable in terms of Order XXIII Rule 3A of CPC was devoid of merits. Learned Senior Counsel submitted that the first suit i.e. Civil Suit No.2536 of 2016, culminated into passing of an Award dated 09.12.2016 by the Lok Adalat at Gurugram in terms of Section 21 of the Legal Services Authority Act, 1987. The award was deemed to be a decree solely for the purposes of its enforcement and execution and not to be construed as a compromise decree under Order XXIII Rule 3 of CPC. In support of this argument, learned Senior Counsel placed reliance upon decision rendered by the Hon'ble Apex Court in case of "***New Okhla Industrial Development Authority (NOIDA) Versus Yunus and others",***

2022 (9) SCC 516.

Learned Senior Counsel submitted that the Award dated 09.12.2016 passed by the Lok Adalat did not constitute a compromise decree as per Order XXIII Rule 3 of CPC. Consequently, there was no legal impediment in filing and pursuing the suit in hand i.e. Civil Suit No. 2886 of 2022. It was further pointed out that defendant Nos. 1 to 5 were themselves conscious of this legal position and raised a specific legal objection before this Court during the hearing of Civil Revision No. 853 of 2023 relating to the adjudication upon an order passed by the trial Court against rejection of application under Order XXIII Rule 3A (wrongly mentioned as Rule 3). This objection was regarding maintainability of said application itself. Learned Senior Counsel, thus, submitted that in light of the decision passed by the Hon'ble Supreme Court in case of ***"Premlata @ Sunita Versus Naseeb Bee and others", 2022 AIR (Supreme Court) 1560***, the defendant Nos. 1 to 5 were not permitted to approbate and reprobate and take contradictory positions regarding the maintainability of the application under Order XXIII Rule 3A of CPC and the second suit.

[8.3] Learned Senior Counsel submitted that a declaration in favour of respondent No. 1-plaintiff had already been granted by the Lok Adalat in its Award dated 09.12.2016. Referring to para-3 of the Award dated 09.12.2016, learned Senior Counsel argued that both the plaint in Civil Suit No. 2536 of 2016 and the compromise dated 23.11.2016 were incorporated into the Award. In continuation, while referring to Clause-17 & 18 of the compromise dated 23.11.2016, learned Senior Counsel further explained that in the event of dishonour of any of the cheques, all exchange deeds and subsequent mutations were to be rendered null and void. Consequently, the plaintiffs in the said suit i.e. the Landowning Companies were not required to initiate any separate litigation for this

purpose. It was submitted that admittedly, the cheques issued in lieu of the payment due under the exchange deeds got dishonoured on 27.03.2018. As a result, the exchange deeds dated 23.11.2016 registered on 24.11.2016, in terms of compromise dated 23.11.2016, became null and void, rendering them unenforceable against the Landowning Companies. Learned Senior Counsel emphasized that the Award of Lok Adalat was a self-contained document, as such the exchange deeds never became effective as per the settled terms on account of dishonour of cheques. Consequently, the prayer in the suit in hand was merely for claiming declaration that the compromise and exchange deeds would not affect the rights of the plaintiff. It was also submitted that the exchange deeds though registered, were not the instruments of transfer in themselves until the complete payment thereunder was made and the entire document was to be read in its entirely to ascertain its effect and operation.

[8.4] Learned Senior Counsel representing respondent No. 1 also emphasized the significance of the terms, condition and recitals in a document in determining the intent of the executant and submitted that a comprehensive reading was required to ascertain the true nature of transaction. In support, learned Senior Counsel placed reliance upon a decision rendered by the Hon'ble Supreme Court in case ***"B.K. Muniraju Versus State of Karnataka & Ors."***, reported as ***2008 (4) SCC 451***. Relevant para-12 thereof is extracted hereunder:-

> *"12. The document in question which is filed as Annexure P-3, has been styled or titled as "Certificate of Grant". In order to know the real nature of the document, one has to look into the recitals of the document and not the title of the document. The intention is to be gathered from the recitals in the deed, the conduct of the parties and the evidence on record. It is settled*

law that the question of construction of a document is to be decided by finding out the intention of the executant, firstly, from a comprehensive reading of the terms of the document itself, and then, by looking into to the extent permissible ‧ the prevailing circumstances which persuaded the author of the document to execute it. With a view to ascertain the nature of a transaction, the document has to be read as a whole. A sentence or term used may not be determinative of the real nature of transaction. Reference in this regard can be made to the following cases i.e. Vidhyadhar vs. Manikrao & Anr., (1999) 3 SCC 573, Subbegowda (Dead) by LR. vs. Thimmegowda (Dead) by LRs., (2004) 9 SCC 734 and Bishwanath Prasad Singh vs. Rajendra Prasad & Anr., (2006) 4 SCC 432."

[8.5] Learned Senior Counsel further submitted that for the purpose of adjudication upon an application under Order VII Rule 11 of CPC, only the contents of the plaint were required to be taken at face value, without further scope of inquiry into the veracity thereof. In support, reliance was placed upon a decision rendered by the Hon'ble Supreme Court in case of **"*P.V. Guru Raj Reddy Rep. by GPA Laxmi Narayan Reddy and another Versus P. Neeradha Reddy and others", [2015 (8) SCC-331]***. Relevant paras-5 & 6 thereof are extracted hereunder:-

"5. Rejection of the plaint under Order VII rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the

claims will have to be adjudicated in the course of the trial.

6. *In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie discloses that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order VII rule 11 the stand of the defendants in the written statement would be altogether irrelevant. "*

[8.6] In addition, learned Senior Counsel submitted that the appeal was not to be entertained as any adjudication upon merits of the contents of plaint was to be left for adjudication by the trial Court during the suit. In this regard, reliance was also placed upon a decision rendered by the Hon'ble Supreme Court in case ***"P. Kumarakurubaran Versus P. Narayanan and Others" [2025 SCC OnLine SC 975]***, relevant para-8.3 thereof is extracted hereunder:-

"8.3. The learned counsel further pointed out that the appellant has sought the relief of declaration of title and permanent injunction by expressly disputing the right, title, and possession claimed by the respondents. The plaint contains specific allegations regarding fraudulent alienation, subsequent encumbrance, and the absence of authority on the part of the appellant's father to effect the transfer of the suit property. These are serious and contested issues that necessitate a detailed adjudication based on oral and documentary evidence. At the threshold stage, it is impermissible for the Court to assess the truth or falsity of these averments or to summarily reject the suit on the ground of limitation. Furthermore, the Additional District Judge, in declining the application under Order VII Rule 11 CPC committed no jurisdictional error, as the plaint disclosed triable issues requiring full-fledged trial. However, the High Court while exercising revisional jurisdiction, has erroneously interfered with the order of the trial Court and proceeded to reject the suit at the preliminary stage."

DISCUSSION AND REASONING

[9] Having heard learned Senior Counsel(s) appearing for the appellants as well as respondent No. 1-plaintiff, I am unable to find substance in the present appeal.

[10] Before proceeding further, at this stage, it is necessary to re-capitulate the provision of Order VII Rule 11 of CPC, which reads as under:-

> " ***Order-VII Rule 11***
>
> ***Rejection of plaint.***
>
> *The plaint shall be rejected in the following cases*
>
> ***(a)*** *where it does not disclose a cause of action;*
>
> ***(b)*** *where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
>
> ***(c)*** *where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
>
> ***(d)*** *where the suit appears from the statement in the plaint to be barred by any law;*
>
> ***(e)*** *where it is not filed in duplicate;*
>
> ***(f)*** *where the plaintiff fails to comply with the provisions of Rule 9;*
>
> ***Provided*** *that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature form correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff. "*

In view of the settled law, while dealing with the application under Order VII Rule 11 of CPC, it is essential to be kept in mind that the contents of the plaint and the documents produced alongwith it are solely to be considered. Furthermore, for the purpose of adjudication upon an application under Order VII Rule 11 of CPC, the averments made in the plaint are to be read as a whole by taking the contents at face value as correct. The veracity of the facts stated in the plaint is not to be tested at this stage, as it requires further examination during the trial.

[11] In order to adjudicate upon the present appeal and determine whether the plaint in the case in hand discloses a cause of action; certain facts pleaded therein, need to be examined. Briefly, for the said purpose, paras-4 to 6, 10, 11 & 18 to 22 of the Civil Suit No. 2886 of 2022 are reproduced hereunder (Page No. 434 of the paper-book):-

> *"4. That following the MGF Group's demerger from Emaar MGF in the year 2018, the Plaintiff herein, i.e. MGF Developments Ltd, now has operations encompassing the various aspects of real-estate development including land identification and acquisition, project planning and designing to marketing and execution of the Demerged Assets.*
>
> *5. That needless to mention that during the subsistence of JV, the said JV had acquired various lands, either in its own name or through its 100% owned subsidiary companies, which are detailed in Annexure 2 to the Scheme of Arrangement, duly approved by the NCLT, New Delhi vide order dated 16.07.2018. It is submitted that vide the said Scheme of Arrangement approved by Hon'ble NCLT, the Demerged Company, i.e., Emaar MGF Land Limited transferred the vested rights in favour of the Plaintiff company including the development rights in the properties and to deal with them in the manner so desired by the Plaintiff. The said properties are duly detailed in Annexure 2 to the Scheme of Arrangement.*
>
> *6. Be that as it may, during, the pendency of the demerger scheme before the Hon'ble NCLT, the Plaintiff herein received all rights including development rights in the land parcel, i.e., 31.12 acres of land situated at Village Chauma, Tehsil and District Gurugram,*

which in the Final Development Plan 2031 are situated at Sector 111 and 113, Gurugram. Pertinently, the said 31.12 acres of land at the relevant time, was in the name of M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd; and M/s Sidhaht Buildcon Pvt Ltd. (hereinafter referred to as Land Owning Companies), which are the 100% holding company of Emaar. MGF Land Limited (now Emaar India Limited).

7 to 9 XXXXXXXX

10. *That while the Plaintiff, for and on behalf of Land Owning Companies and the Defendant No.6, for and on behalf of Defendant No.1 to 5 were negotiating the said transaction, the Defendant No. 1 to 6 started to misrepresent in the real estate market and estate brokers that the Defendant No.1 to 6 had acquired the land situated at Village Chauma, Tehsil and District Gurugram, as detailed aforesaid, and had rights and were in position to alienate the said land to third parties. Thus, being aggrieved by the aforesaid misrepresentations by the Defendant No.1 to 6, the said Land owning companies of the Land of the Plaintiff namely M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd. and M/s Sidhant Buildcon Pvt. Ltd. filed a civil suit being CS No. 2536/2016 before the Ld. Civil Judge, Gurugram, Inter-alia, seeking declaration in and permanent injunction against the Defendant No. 1 to 5 in respect of the illegal activities and mis-representations made by them.*

11. *That post filing of the aforesaid suit, the Defendant No.6, for and on behalf of Defendant No.1 to 5 further negotiated with the Plaintiff and accordingly, the Land Owning Companies and Defendant No.1 to 5 entered into a compromise/settlement on 23.11.2016. The terms of compromise/settlement between M/s Sparsh Promoters Pvt. Ltd., M/s Sardesh Buildcon Pvt. Ltd. and M/s Sidhant Buildcon Pvt. Ltd. and Defendant No 1 to 5, are enumerated herein below:*

    I) *Land owning companies Will give land measuring 31.12 acres, as detailed in para 7 above to Defendant No.1 to 5 whereas Defendant No.1 to 5 will give land measuring 15.12 acres, as detailed in para 8 above, in exchange to M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd and M/s Sidhant Buildcon Pvt. Ltd.*

    II) *In addition to the aforesaid transfer of land, the Defendant No. 1 to 5 would also pay a sum of Rs.114 crores to M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd.*

and M/s Sidhant Buildton Pvt. Ltd. towards monetary consideration under the Exchange Deeds.

III) *Five separate exchange deed will be executed for lands set out in para 7 and 8, above as "A" to "E". The Exchange Deed, A to D will contain details of respective post-dated cheques issued by Defendant No. 1 to 5 while entire monetary consideration stood paid under Exchange Deed "E".*

iv) *The Exchange Deed would assume validity only upon encashment of post dated cheques issued by Defendant No.1 to 5, upon presentation.*

v) *In case, any of the cheques issued by Defendant No.1 to 5 under the Exchange Deed "A" to "D" is dishonoured upon presentation, in that event, all the Exchange Deeds and consequent mutation will be rendered as null and void.*

vi) *Till such time, all the cheques detailed in Exchange Deeds are duly encashed, neither possession nor the Defendant No.1 to 5 shall have any right to create third party right of any nature in respect of land holdings received in exchanged.*

vii) *In the event of dishonour of any of the cheque(s) detailed in Exchange Deeds, all Exchange Deed and consequent mutation shall be ipso facto rendered null and void and the Land owning companies will not be obligated to institute any litigation independently, in the court of law for the purpose of seeking declaration.*

18. *That the Plaintiff, accepted the said cheques, however the Defendant Nos. 1 to 5 again requested the Plaintiff to not present the second set of cheques on the pretext that they did not have sufficient balance in their Bank Accounts required to honour the said cheques. Thereafter, the Defendant No.1 to 5 once again replaced the aforesaid cheques with a third set of Cheques, however, when the Plaintiff before the dates of expiry of the cheques, presented the said Cheques to the Bankers, the said cheques got dishonoured on 27.03.2018 for the reason, "Stop Payment Instructions" issued by Defendants 1 to 5.The reason for making such instruction by the Defendant Nos. 1 to 6 to their Bankers was they did not have "Insufficient funds" in their Bank Accounts at that point of time. The details of third set of cheques are given below:*

SL. No.	Cheque No.	Amount	Date	Bank	In favour of
1.	537529	5,65,36,248	31.12.2017	Axis Bank Ltd.	Sandesh Buildcon Pvt. Ltd.
2.	039931	4,05,76,938	31.12.2017	Axis Bank Ltd.	Sandesh Buildcon Pvt. Ltd.
3.	667014	44,17,885	31.12.2017	Axis Bank Ltd.	Sandesh Buildcon Pvt. Ltd.
4.	055703	1,90,42,017	31.12.2017	Axis Bank Ltd.	Sandesh Buildcon Pvt. Ltd.
5.	039878	7,12,01,256	31.12.2017	Axis Bank Ltd.	Sandesh Bulldcon Pvt. Ltd.
6.	039933	4,35,96,617	31.12.2017	Axis Bank Ltd.	Sidhant Buildcon Pvt. Ltd.
7.	039879	14,46,87,043	31.12.2017	Axis Bank Ltd.	Sidhant Bulidcon Pvt. Ltd.
8.	537530	19,73,97,751	31.12.2017	Axis Bank Ltd.	Sparsh Promotes Pvt. Ltd.
9.	039932	9,61,57,904	31.12.2017	Axis Bank Ltd.	Sparsh Promotes Pvt. Ltd.
10.	667015	37,99,115	31.12.2017	Axis Bank Ltd.	Sparsh Promotes Pvt. Ltd.
11.	055704	15,78,03,652	31.12.2017	Axis Bank Ltd.	Sparah Promotes Pvt. Ltd.
12.	431570	3,48,90,468	31.12.2017	Axis Bank Ltd.	Sandesh Buildcon Pvt. Ltd.
13.	431572	2,62,53,956	31.12.2017	Axis Bank Ltd.	Sidhant Buildcon Pvt. Ltd.
14.	431571	7,05,22,735	31.12.2017	Axis Bank Ltd.	Sparsh Promoters Pvt. Ltd.

19. *That as seen from the above, the Defendant No.1 to 5 even after replacing the cheques twice, failed to make payment of the monetary consideration under the Exchange Deeds. Besides the aforesaid, the neither parties ever exchanged nor handed over the physical possession of their respective lands to each other. In other words, neither party acted upon the exchange deed and the possession of the respective lands were held by the respective companies.*

20. *That in view thereof, Mr. Rakshit Jain, as the Authorized Signatory of the said Land-owning companies, who is also the Director of the Plaintiff Company, vide letter dated 28.03.2018 intimated the Defendant No.1 to 4 about the dishonour of the cheques issued by them, respectively. Vide the said letter dated 28.03.2018, the said land-owning companies informed the Defendant No.1 to 4 that all*

rights, title and interest in the lands, as Schedule A in all the Exchange Deeds as per para 13 above, stood automatically cancelled and the Exchange Deeds executed between the parties has become null and void since the Defendant No.1 to 4 have breached the most essential condition of the Compromise Agreement as well as Exchange Deeds. Consequently, the amount INR 16,30,03,539 (Sixteen Crores Thirty Lakhs Three Thousand Five Hundred and Thirty Nine only) which had been paid by the Defendant Nos. 1 to 5 through demand drafts against the agreed monetary consideration of Rs. 114,00,00,000 (Rupees One Hundred Fourteen Crores Only) towards the exchange, also stood forfeited.

21. *That vide Order dated 08.01.2018 in C.P. No. 689/2016, further corrected on 16.07.2018, the Hon'ble National Company Law Tribunal, New Delhi vide its order dated 16.07.2018 in Company Petition No. 689 of 2016 approved the Scheme of Arrangement of demerger of Emaar MGF Land Limited, and accordingly, rights, title and interest in lands measuring 31.12 acres situated at Village Chauma, Tehsil and District Gurugram vested in the Plaintiff with effect from the appointed date i.e. 30.09.2015. It is pertinent to mention that the physical possession of the said land continues with the Plaintiff. The land in question is lying Vacant & the possession will follow the title, which as per law & facts vests with the plaintiff. It is submitted that the vesting of the demerged undertaking including the aforesaid land of Chauma, in the Plaintiff by virtue of the Scheme sanctioned by the Order dated 08.01.2018 r/w 16,07.2018 of the Hon'ble NCLT has been confirmed by Emaar India Ltd. inter alia in an email dated 11.10.2018 of the Company Secretary of Emaar namely Mr. Bharat Bhushan Garg to the effect that MGF has all the rights over the assets being demerged. It was further confirmed therein that the Court Order is in the nature of conveyance in favour of MGF.*

22. *That In July, 2021, the Plaintiff company, while reviewing its licenses with Defendant No.8, was surprised to note that even after cancellation of Exchange Deeds owing to default in performance of the respective obligations of Defendant No.1 to 5, the Defendant No. 7 in collusion with Defendant No. 1 to 6 have applied for grant of License vide Application LC-4572A dated 19.07.2021 to the Directorate of Town and Country Planning, Haryana for setting up a residential project under New Integrated*

> *Licensing Policy (NILP) over the land measuring 16.1125 acres which includes land measuring 4.53 acres of the Plaintiff out of the subject Land, whereby the said Defendants have illegally claimed themselves as the owners of the said land, the Plaintiff upon obtaining knowledge of the same, immediately filed its objections dated 27.08.2021, interalia, praying for rejection of the said application for grant of license qua the, land, in which it has all the rights. The Plaintiff has also come to know that the Defendant No.1 to 7, in connivance with each other and in criminal conspiracy and to play fraud upon the Plaintiff have undertaken various other steps to frustrate the legal rights and title of the Plaintiff on the land measuring 31.12 acres situated at Village Chauma, Tehsil and District Gurugram. It is submitted that Defendant No.1 to 5 have purportedly partitioned the said property amongst themselves, not physically but on papers, and while relying upon the said forged and fabricated documents, the Defendant No.1 to 5 have malafidely got their name entered into the revenue records, by fraudulent and Legal means in order to cheat and dishonestly misappropriate the land of the Plaintiff."*

From a perusal of the aforementioned contents of the plaint as well as the documents referred to therein, it is evident that the plaint apparently discloses a cause of action to seek declaration that the compromise/settlement dated 23.11.2016 and the exchange deeds dated 23.11.2016 are ineffective in relation to the rights of the plaintiff in the subject property measuring 31.3 acres of which the development rights allegedly vested in it by virtue of Scheme of Arrangement sanctioned / approved vide order dated 16.07.2018 passed by the NCLT. The plaint further pleads that the exchange was to assume validity and enforceability only upon payment under the cheques. Given these specific pleadings, it would not be appropriate at this stage of proceedings to reject the plaint without affording the plaintiff an opportunity to prove the above mentioned facts during the course of trial. Furthermore, mere fact that there was no

dealing between the plaintiff-company and defendant Nos. 1 to 5 during the course of the compromise dated 23.11.2016 and the exchange deeds dated 23.11.2016; would not disentitle or bar the plaintiff-company from seeking declaration with respect to the above settlement and the exchange deeds being ineffective in relation to its rights in the subject property for the reason that the rights there-under allegedly got vested in the plaintiff-company by virtue of the Scheme of Arrangement approved by NCLT vide order dated 16.07.2018, and its effect needs to be tested during trial. Additionally, the intention of the parties towards the enforceability of the exchange deeds is to be gathered and examined conclusively upon appreciation of covenants therein during the course of trial. Even the plea raised on behalf of respondent No. 1-plaintiff to the effect that the Award dated 09.12.2016 passed by the learned Lok Adalat, Gurugram itself constituted a declaratory decree in favour of the plaintiff regarding the exchange deeds, thereby not affecting its rights in the subject property. Moreover, this aspect even requires a complete trial based on the evidence in the suit and cannot be dealt with at this stage under the limited and cautious jurisdictional scope of Order VII Rule 11 of CPC; requiring relatively broader discussion on the issue.

[12] As per Order VII Rule 11 (a) of CPC, plaint can be rejected when it fails to disclose a cause of action. The term ‘Cause of Action” refers to the bundle of material facts that must be pleaded in the plaint and proved by the plaintiff in order to succeed in the suit. However, there is a distinction between the term “plaint not disclosing a cause of action” and/or “the plaintiff’s locus to file the suit”. In exercise of powers under Order VII Rule 11 of CPC, the Court can only examine whether the facts pleaded in the plaint disclose a cause of action. The Court at this stage cannot examine the veracity of such facts nor can it examine the plaintiff’s locus to

file the suit unless it is established that the plaintiff has no right or capacity to file the suit due to a legal barrier, which is missing in this case. Therefore, the locus of a plaintiff can only be examined during the trial upon examination of necessary and material facts duly pleaded and proved by the parties to the suit. Reference in this regard can be made to decision rendered by the Hon'ble Apex Court in case of ***"State of Orissa Versus Klockner and Company and Ors."***, reported as ***1996 (8) SCC 377***. In the said case, the Hon'ble Apex Court went on to upheld the reasoning recorded by the High Court to the effect that there was difference between the plea that there was no cause of action for the suit and the plea that the plaint does not disclose any cause of action. Relevant paras-25 & 26 of the said judgment are re-produced hereunder:-

> *"25. Now coming to Special Leave Petition (C) No. 19846/95, this petition is filed against the judgment and order of the High Court of Orissa at Cuttack in First Appeal No. 14/95 dated 12.5.95. By the Order under appeal, the High Court has reversed the Order of the learned Subordinate Judge, Bhubaneswar dated 26.3.94, by which the learned Subordinate Judge accepting an application filed under Order 7 Rule 11 C.P.C., rejected the plaint in title suit No. 231/92 filed by the first respondent in Special Leave Petition. The learned Single Judge of the High Court while reversing the Order of the learned Subordinate Judge observed as follows:-*
>
> > *"In the present case on a fair reading of the petition filed by defendant No. 1 under Order 7, Rule 11 of C.P.C it is clear that the case of the applicant is that the plaintiff has no cause of action to file the suit. It is not specifically pleaded by the applicant that the plaint does not disclose any cause of action. The learned trial Judge has also not recorded any specific finding to this effect. From the discussions in the order it appears that the learned trial Judge has not maintained the distinction between the plea that there was no cause of action to the suit and the plea that the plaint does not disclose a cause of action. No*

specific reason or ground is stated in the order in support of the finding that the plaint is to be rejected under Order 7, Rule 11(a). From the averments in the plaint, it is clear that the plaintiff has pleaded a cause of action for filing the suit seeking the reliefs stated in it. That is not to say that the plaintiff has cause of action to file the suit for the reliefs sought that question is to be determined on the basis of materials (other than the plaint) which may be produced by the parties at appropriate stage in the suit. For the limited purpose of determining the question whether the suit is to be wiped out under Order 7, Rule 11(1) or not the averments in the plaint are only to be looked into. The position noted above is also clear from the under Order 7, Rule 11 in which the thrust of the case pleaded is that on the stipulations in the agreement of 20.4.82 the plaintiff is not entitled to file a suit seeking any of the reliefs stated in the plaint.

10. Coming to the question whether the plaint is to be rejected under clause (d) of rule 11 of order 7, the Supreme Court in the case of Orient Transport Co. (supra) has clearly laid down that there is a distinction between a case in which the validity, effect and existence of the arbitration agreement is challenged and suit in which the validity of the contract which contains an arbitration clause is challenged. The bar to suit under Section 32 of the Arbitration Act extends to a case where the existence, effect or validity of an arbitration agreement is challenged and not to the latter type of the suit. On this question too the learned trial Judge has failed to maintain the distinction between the two types of cases. He has failed to notice that the case pleaded by the plaintiff is that the entire agreement including the arbitration clause is null and void and unenforceable and not that the arbitration agreement is null and void.

11. From the lower court record in the case and also the records in a similar suit filed by the State of Orissa, Title Suit No. 152 of 1993 in which OMC Ltd. is a defendant, it appears that in both the cases the defendant No. 1 - Klockner & Co. filed applications under section 3 of the Foreign Awards (Recognition and Enforcement) At,

1961. Such application presupposes that the applicant accepts the position that the said Act applies to the case and the Arbitration Act, 1940 has no application to the case. Under the Foreign Awards Act, there is no specific provision for bar of suit. Further, from the averments in the application filed under Order 7, Rule 11 of C.P.C., it is clear that the main case pleaded by the applicant was that the parties had agreed that the Swiss Law will be applicable to the contract as the arbitration agreement and the venue of arbitration will be at London and, therefore, the Indian Law in general and the arbitration Act in particular, have no application to the case. Alternatively the applicant has pleaded that even assuming that the Indian Law of Arbitration applies to the case then the suit is barred under section 32 of the Act. The learned trial Judge does not appear to have considered the main case pleaded by the applicant but disposed of the petition on consideration of the alternative case pleaded by it. Therefore this finding against bar of the suit under Order 7, Rule 11(d) is also vitiated.

12. On the analysis and discussions in the foregoing paragraphs, it is my considered view that the order passed by the learned trial Judge rejecting the plaint under Order 7, Rule 11(a) and (d) of C.P.C. is unsustainable and has to be set aside. Accordingly the appeal is allowed and the order dated 26.3.1994 of the Civil Judge (Senior Division) Bhubaneswar in Misc. Case No. 75 of 1993 is set aside. There will be no order for costs of this Court."

26. After hearing the learned counsel on both sides and after carefully perusing the relevant pleadings, we do not think that the High Court has committed any error in rejecting the application of the appellant under Order 7 Rule 11. We accept the view taken by the High Court and consequently find no case for interference."

Thus, the pleading set up by the plaintiff in the suit asserting that the appointed date under NCLT Scheme approved on 16.07.2018 binds subsidiaries i.e. the Landowning Companies, and that the suit land

formed part of the de-merged undertaking with all development rights vested with the plaintiff-Resulting Company, require examination during trial. This matter of evidence falls outside the purview of Order VII Rule 11 of CPC, as it is essentially a question of fact.

[13] Another submission made on behalf of the appellants is that, in light of the specific bar under Order XXIII Rule 3A of CPC, the present suit for declaration and permanent injunction by the plaintiff was not maintainable in the present form. For the sake of convenience, Order XXIII Rule 3 A of CPC is recapitulated hereunder:-

> *“* ***Order-XXIII Rule 3A***
>
> ***Bar to suit****.—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. ”*

It is evident from the above provision that the specific bar envisaged therein applies only in the event of a separate suit filed to challenge or set aside the decree on the ground of unlawful compromise.

In the humble opinion of this Court, the aforesaid issue raised at the instance of defendant Nos. 1 to 6 is not substantiated by the present facts. A thorough examination of the contents of the entire plaint reveals that nowhere in the pleadings or even in the relief clause has it been asserted that the Award dated 09.12.2016, passed by the Lok Adalat at Gurugram should be set aside on the ground that the compromise / settlement dated 23.11.2016 was unlawful. On the contrary, the entire claim in this suit is predicted on the strength of compromise / settlement dated 23.11.2016 as well as the decree dated 09.12.2016, which explicitly acknowledges its validity. It has only been pleaded that for the non-fulfillment of the reciprocal obligation cast upon defendant Nos. 1 to 5 regarding payment of the balance amount due on account of dishonour of

their cheques; as per the Lok Adalat's award dated 09.12.2016, which was founded on the settlement dated 23.11.2016, the exchange deeds dated 23.11.2016 were ineffective in relation to rights of the plaintiff-company regarding the subject property. The relevant para-3 of the Lok Adalat's Award dated 09.12.2016 (Page No. 325 of the paper-book) and para-29 from the plaint (CS-2886-2022) being necessary are re-produced hereunder (Page Nos. 457-458 of the paper-book):-

"Para-3 of the Lok Adalat's Award dated 09.12.2016

3. Heard in view of statements of the parties to the suit and compromise, the award is hereby passed and claim of the plaintiffs is allowed, as prayed for, subject to the provisions of the registration act, however, this transfer shall not defeat right of the prior mortgagee, if any over the suit property. This award shall be binding only on the parties to the suit and shall not effect the right of any third person. ***Both the plaint and the compromise (ex.ci) shall form part of this award.*** *File be consigned to the record room after due compliance.*

Pronounced in daily lok adalat.
Dated: 09.12.2016

(Ravisha Kaushik)
Presiding Officer
Civil Judge (Junior Division)
Gurgaon "

Para-29 of CS-2886-2022

29. *That it is clear that the Defendant Nos. 1 to 5 have not abided by the terms of Compromise Agreement as well as Exchange Deeds inasmuch as one of the essential condition to the said agreements as encashment of cheques issued by Defendant No. 1 to 5, which admittedly, were dishonoured. Consequent to the said non-compliance, the Defendant No. 1 to 5 themselves by their own conduct have got the Exchange Deeds rendered null and void ab-initio, as already decreed upon the Award dated 09.12.2016 passed by Lok Adalat, Gurgaon into which the Compromise dated 23.11.2016 has been merged. As per the said decree upon the said Award*

> *dated 09.12.2016 already passed on the basis of Compromise dated 23.11.2018 by the Ld. Court having jurisdiction, the Plaintiff is not required to proceed for declaration of nullity of the Exchange Deeds. The Plaintiff has initiated proceedings for execution of the Compromise decree."*

Thus, in view of the aforesaid, the bar under Order XXIII Rule 3A of CPC was not attracted to the facts and circumstances of the present case for laying challenge to the filing of plaint / Civil Suit No. 2886 of 2022, in terms of Order VII Rule 11 of CPC.

[14] Moreover, no merit can be found in the submission made on behalf of the appellants-defendants when they point out that the separate suit was not maintainable in view of the observations made by this Court in its order dated 19.04.2022 passed in CWP No. 25534 of 2021. Relevant para-37 thereof is extracted hereunder (Page No. 426-427 of the paper-book):-

> *" **37.** Having heard the rival submissions made by learned Senior counsel for the parties, I find that the award dated 09.12.2016 is passed by the Daily Lok Adalat. This award has been passed by the Daily Lok Adalat presided by the Civil Judge (Jr. Divn.) Gurgaon, therefore, it has to be treated alike compromise decree under Order 23 Rule 3 CPC. It is also true that all questions are to be decided in the same suit as the decree is not amenable to* appeal and thus fresh independent suit is barred. "

With all due respect to the above observations made in the order dated 19.04.2022 while deciding the writ petition, the same are not sufficient to non-suit the plaintiff at this stage for the reason that the main issue which was deliberated upon before this Court in the said petition was about the maintainability of the writ petition itself and not of the suit. As such, any observation made about maintainability of separate suit which

was not even the subject matter of consideration in the writ petition, cannot be termed as final and conclusive determination on such issue. Furthermore, the plea raised on behalf of the appellants about the maintainability of the suit, based on the reasoning recorded by the Hon'ble Court that the award passed by the Lok Adalat was a decree under Order XXIII Rule 3 of CPC and thus, all questions related thereto were required to be adjudicated upon in the same suit and not by way of a separate suit, goes contrary to the law laid down by the Hon'ble Supreme Court in case of "***New Okhla Industrial Development Authority (NOIDA) Versus Yunus and others", 2022 (9) SCC 516***. In short, the Hon'ble Supreme Court in case of ***New Okhla Industrial Development Authority (NOIDA) (supra)*** went on to hold that the Award passed by Lok Adalat was the culmination of a non-adjudicatory process. The provision contained in Section 21 of the Legal Services Authority Act, 1987 by which the award is treated as if it were a decree is intended only to clothe the award with enforceability and cannot be challenged, by way of an appeal in view of the express provisions forbidding it, unless it is set aside in other appropriate proceedings, it become enforceable. Thus, the legal fiction that the award is to be treated as a decree goes no further and it is not a case where compromise is arrived at under Order XXIII Rule 23 of CPC between the parties and Court is expected to look into the compromise and satisfy itself that it is lawful before it assumes efficacy by virtue of Section 21. Relevant paras-60 to 63 of the case of ***New Okhla Industrial Development Authority (NOIDA) (supra)*** are extracted hereunder:-

> *"60. The award which is passed by the Lok Adalat cannot be said to be an award passed under Part III. It is the compromise arrived at between the parties before the Lok Adalat which culminates in the award by the Lok Adalat. In fact, an award under Part III of the Act contemplates grounds or reasons and therefore,*

adjudication is contemplated and Section 26(2) of the Act is self-explanatory.

61 The next aspect is even more fatal to the case of the respondents. Not only must it be an award passed as a result of the adjudication but it must be passed by 'the Court' allowing compensation in excess of the amount awarded by the collector. The word 'Court' has been defined in the Act as the Principal Civil Court of original jurisdiction unless the appropriate Government has appointed a Special Judicial Officer to perform judicial functions of the court under this Act. We have noticed the composition of a Lok Adalat in Section 19(2) of the '1987 Act'. The Court is not the same as a Lok Adalat.

62. The Award passed by the Lok Adalat in itself without anything more is to be treated by the deeming fiction to be a decree. It is not a case where a compromise is arrived at under Order XXIII of the Code of Civil Procedure, 1908, between the parties and the court is expected to look into the compromise and satisfy itself that it is lawful before it assumes efficacy by virtue of Section 21. Without anything more, the award passed by Lok Adalat becomes a decree. The enhancement of the compensation is determined purely on the basis of compromise which is arrived at and not as a result of any decision of a 'Court' as defined in the Act.

63. An Award passed by the Lok Adalat is not a compromise decree. An Award passed by the Lok Adalat without anything more, is to be treated as a decree inter alia. We would approve the view of the learned Single Judge of the Kerala High Court in P.T. Thomas (supra). An award unless it is successfully questioned in appropriate proceedings, becomes unalterable and non-violable. In the case of a compromise falling under Order XXIII Code of Civil Procedure, it becomes a duty of the Court to apply its mind to the terms of the compromise. Without anything more, the mere compromise arrived at between the parties does not have the imprimatur of the Court. It becomes a compromise decree only when the procedures in the Code are undergone."

Moreover, even the Writ Court in its subsequent order dated 04.05.2022 in RA-CW-73-2022 in CWP-25534-2021, went on to observe

that the Court did not comment upon the remedies which were available to the plaintiff herein, in accordance with law in future. Meaning thereby, the Writ Court was itself conscious of the fact that any observation made in the Writ Court's order about the availability of remedies to the plaintiff was not final or conclusive. Relevant/operative para(s) of the aforesaid order dated 04.05.2022 are extracted hereunder (Page Nos. 430-431 of the paper-book):-

> *"While deciding the writ petition, this Court has taken note of pleadings of civil suit, execution of exchange deeds and compromise, incorporation of mutations and alleged misrepresentation of respondents while applying for the licence in question. Thereafter, this Court observed that it would remain debatable as to whether the petitioner can espouse the cause at such a belated stage having acquiesced the factum of filing suit and the knowledge about the aforesaid transactions. This Court further observed that this Court would not comment upon the remedies which may be available to the petitioner in accordance with law in future. The present petition suffers from delay and latches. Qua this aspect of the case, the petitioner has been left to avail its legal remedies in accordance with law. For the second limb of arguments, this Court has passed adequate directions.*
>
> *In view of aforesaid observations, there is no ground to review the order dated 19.04.2022 passed by this Court.*
>
> *Application is accordingly, dismissed."*

Even the decision rendered in case of ***P.T. Thomas (supra)*** was not going to help the cause of appellants as in the said case, the Hon'ble Supreme Court was pleased to hold mainly to the effect that the award passed by the Lok Adalat was a consent decree and the parties thereto were estopped by its terms from resiling its impart. In the present facts, the situation rather was converse; respondent No. 1-plaintiff was relying upon the Lok Adalat's Award dated 09.12.2016. More than that, the decision made in case of ***P.T. Thomas (supra)*** was even discussed and

dealt with by the Hon'ble Apex Court at the time of adjudication in case of ***New Okhla Industrial Development Authority (NOIDA) (supra)***.

[15] Furthermore, in the earlier Revision Petitions bearing CR No. 33 of 2023 and CR No. 858 of 2023 which were decided by this Court vide common order dated 13.07.2023, a specific objection about the maintainability of application under Order XXIII Rule 3 (wrongly mentioned instead of Rule 3A) was raised by defendant Nos. 1 to 6 while stating that the award passed by Lok Adalat was not to be construed as compromise decree under Order XXIII Rule 3 of CPC. Relevant portion from the decision of CR No. 33 of 2023 to this effect is extracted hereunder (Page No. 582 of the paper-book):-

> *"……It is pointed out that this Award, now cannot be termed as compromise decree under Order 23 Rule 3 CPC. This Award by virtue of deeming fiction of being a decree is only limited to a extent to clothe the same with enforceability. In this regard, learned Senior counsel has cited judgment passed in Okhla Industrial Development Authority (Noida) vs. Yunus and others, 2022(9) SCC 516."*

In such circumstances, as per the law laid down by the Hon'ble Apex Court in ***Premlata @ Sunita's case (supra)***, the appellants were not to be permitted to approbate and reprobate and take such contradictory position at the same time on the point of award dated 09.12.2016 not to be construed as a compromise decree in terms of Order XXIII Rule 3 CPC and also as regards the remedies available and maintained by the plaintiff in this regard. Relevant para-4 from the decision of ***Premlata @ Sunita's case (supra)*** is extracted hereunder in support:-

> *"4. At the outset, it is required to be noted and it is not in dispute that the plaintiff instituted the proceedings before the Revenue Authority under Section 250 of the MPLRC. These very defendants raised an objection before the*

Revenue Authority that the Revenue Authority has no jurisdiction to deal with the matter. The Tehsildar accepted the said objection and dismissed the application under Section 250 of the MPLRC by holding that as the dispute is with respect to title the Revenue Authority would not have any jurisdiction under MPLRC. The said order passed by the Tehsildar has been affirmed by the Appellate Authority (of course during the pendency of the revision application before the High Court). That after the Tehsildar passed an order rejecting the application under Section 250 of the MPLRC on the ground that the Revenue Authority would have no jurisdiction, which was on the objection raised by the respondents herein – original defendants, the plaintiff instituted a suit before the Civil Court. Before the Civil Court the respondents – original defendants just took a contrary stand than which was taken by them before the Revenue Authority and before the Civil Court the respondents took the objection that the Civil Court would have no jurisdiction to entertain the suit. The respondents – original defendants cannot be permitted to take two contradictory stands before two different authorities/courts. They cannot be permitted to approbate and reprobate once the objection raised on behalf of the original defendants that the Revenue Authority would have no jurisdiction came to be accepted by the Revenue Authority/Tehsildar and the proceedings under Section 250 of the MPLRC came to be dismissed and thereafter when the plaintiff instituted a suit before the Civil Court it was not open for the respondents – original defendants thereafter to take an objection that the suit before the Civil Court would also be barred in view of Section 257 of the MPLRC. If the submission on behalf of the respondents – defendants is accepted in that case the original plaintiff would be remediless. The High Court has not at all appreciated the fact that when the appellant – original plaintiff approached the Revenue Authority/Tehsildar he was nonsuited on the ground that Revenue Authority/Tehsildar had no jurisdiction to decide the dispute with respect to title to the suit property. Thereafter when the suit was filed and the respondents defendants took a contrary stand that even

> *the civil suit would be barred. In that case the original plaintiff would be remediless. In any case the respondents – original defendants cannot be permitted to approbate and reprobate and to take just a contrary stand than taken before the Revenue Authority. Therefore, in the facts and circumstances of the case, the learned trial Court rightly rejected the application under Order 7 Rule 11 CPC and rightly refused to reject the plaint. The High Court has committed a grave error in allowing the application under Order 7 Rule 11 CPC and rejecting the plaint on the ground that the suit would be barred in view of Section 257 of the MPLRC. The impugned judgment and order passed by the High Court is unsustainable and is liable to be set aside."*

[16] Further, in the humble opinion of this Court, a perusal of the plaint shows that substantively relief of declaration has been prayed for by respondent No.1-plaintiff to the effect that defendant Nos. 1 to 5 were bound by the terms of the compromise dated 23.11.2016 and as such, the exchange deeds dated 23.11.2016 registered on 24.11.2016 upon dishonour of cheques were rendered null and void; not affecting the rights of respondent No. 1-plaintiff in the subject property. As per the appellants-defendant Nos. 1 to 7, the suit in hand was covered under Article 58 of the Schedule to Limitation Act and, therefore, limitation for filing the same was three years from the date when right to sue first accrued. The term "right to sue" came to be elaborated upon earliest in case of ***"Mt. Bolo Versus Mt. Koklan", AIR 1930 Privy Council 270***. Relevant portion thereof is extracted hereunder:-

> *"There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted."*

The decision of ***Mt. Bolo's case (supra)*** was later followed by the Hon'ble Apex Court in case of ***"Daya Singh & Anr. Versus Gurdev Singh (Dead) by LRs & Ors."***, reported as ***2010 (2) SCC 194***. Relevant para Nos. 7 to 10 thereof are extracted hereunder:-

> *"7. As noted herein earlier, the only question, therefore, to be decided is whether the mere existence of an adverse entry in the revenue records had given rise to cause of action as contemplated under Article 58 or it had accrued when the right was infringed or threatened to be infringed. Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint itself. Part III of the schedule which has prescribed the period of limitation relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues. In support of the contention that the suit was filed within the period of limitation, the learned senior counsel appearing for the plaintiffs/appellants before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention the learned senior counsel strongly relied on a decision of the Privy Council reported in AIR 1930 PC 270 [Mt.Bolo vs. Mt. Koklan and others]. In this decision their Lordships of the Privy Council observed as follows :-*
>
> > *"There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted."*
>
> *8. A similar view was reiterated in the case of C.Mohammad Yunus vs. Syed Unnissa and others [AIR 1961 SC 808] in which this Court observed :*
>
> > *"the period of 6 years prescribed by Article 120 has to be computed from the date when the right to sue accrued and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right."*

9. *In the case of C.Mohammad Yunus (supra), this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is atleast a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry into the revenue record cannot give rise to cause of action.*

10. *Keeping these principles in mind, let us consider the admitted facts of the case. In para 16 of the plaint, it has been clearly averred that the right to sue accrued when such right was infringed by the defendants about a week back when the plaintiffs had for the first time come to know about the wrong entries in the record of rights and when the defendants had refused to admit the claim of the plaintiffs. Admittedly, the suit was filed on 21st of August, 1990. According to the averments made by the plaintiffs in their plaint, as noted hereinabove, if this statement is accepted, the question of holding that the suit was barred by limitation could not arise at all. Accordingly, we are of the view that the right to sue accrues when a clear and unequivocal threat to infringe that right by the defendants when they refused to admit the claim of the appellants, i.e. only seven days before filing of the suit. Therefore, we are of the view that within three years from the date of infringement as noted in Paragraph 16 of the plaint, the suit was filed. Therefore, the suit which was filed for declaration on 21st of August, 1990, in our view, cannot be held to be barred by limitation. Therefore, the courts below including the High Court had proceeded entirely on a wrong footing that the cause of action arose on the date of entering into the compromise and, therefore, the suit was barred by limitation, whether or not the compromise decree was acted upon and whether delivery of possession had taken place has to be decided by the trial court before it could come to a proper conclusion that the suit was barred by limitation. In this view of the matter, we do not find any ground to agree with the findings of the High Court that the suit was barred by time because of its filing after 18 years of entering into the compromise. The*

> *question of filing the suit before the right accrued to them by compromise could not arise until and unless infringement of that right was noticed by one of the parties. The High Court in the impugned judgment, in our view, had fallen in grave error in holding that the suit was barred by time and had ignored to appreciate that the rights of the appellants to have the revenue record accrued first arose in 1990 when the appellants came to know about the wrong entry and the respondents failed to join the appellants in getting it corrected. In our view, the High Court was not justified in holding that mere existence of a wrong entry in the revenue records does not, in law, give rise to a cause of action within the meaning of Article 58 of the Act. No other point was urged before us by the learned counsel for the parties.*

The Hon'ble Apex Court went on to acknowledge and approve the principle laid down in case of ***Mt. Bolo's case (supra)*** in its subsequent decision of ***Shakti Bhog Food Industries Limited Versus Central Bank of India & Anr." (2020) 17 SCC 260***. Relevant para-21 thereof is re-produced hereunder:-

> *21. The distinction between the two Articles (Article 58 and Article 120) has been expounded in paragraphs 27 to 30 of the reported decision, which read thus: [Khatri Hotels (P) Ltd. case[14], SCC p.139]*
>
> *"27. The differences which are discernible from the language of the above reproduced two articles are:*
>
> *(i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,*
>
> *(ii) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.*
>
> *28. Article 120 of the 1908 Act was interpreted by the Judicial Committee in Bolo v. Koklan and it was held:*

(SCC OnLine PC: IA p. 331)

> *" There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted."*

The same view was reiterated in Annamalai Chettiar v. A.M.K.C.T. Muthukaruppan Chettiar and Gobinda Narayan Singh v. Sham Lal Singh.

29. In Rukhmabai v. Lala Laxminarayan, the threeJudge Bench noticed the earlier judgments and summed up the legal position in the following words: (Rukhmabai case [AIR 1960 SC 335, AIR p. 349, para 33)

> *"33. … The right to sue under Article 120 of the [1908 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right."*

30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."

(emphasis supplied)

Notably, the expression used in Article 113 is similar to that in Article 120, namely, "when the right to sue accrues". Hence, the principle underlying this dictum

must apply proprio vigore to Article 113."

Applying the aforesaid, a perusal of the plaint shows that although the cheques issued in terms of exchange deeds dated 23.11.2016 were dishonoured on 27.03.2018, however, the threat to infringe the rights claimed by the plaintiff in the suit qua the property in question for the first time became clear and unequivocal only on 19.07.2021 when defendant Nos. 1 to 6 applied for license vide Application No. LC-4572-A dated 19.07.2021 for land measuring 16.1125 acres by included 4.25 acres of land from the subject property. In such circumstance, right to sue in juxtaposition to the infringement of right asserted in the suit in the subject property accrued for the first time on 19.07.2021 and not before that. In such circumstances, the decisions in cases of ***Nikhila Divyang Mehta and Anr. (supra)*** and ***Shakti Bhog Food Industries Limited (supra)*** were not of much help for the appellants. Accordingly, the suit filed at the instance of respondent No. 1-plaintiff in July 2022 was not to be treated *prima facie* to be barred by limitation. Moreover, such complicate question of limitation need not be pre-judged at this stage without complete and comprehensive examination of facts and law during the course of trial. Especially, the present is not a case where on the face of it upon reading of averments in the plaint, it can be traced out in absolute terms that the suit is barred by limitation as per Article 58 of the Limitation Act, 1963 and, therefore, the decision in case of ***Shri Mukund Bhavan Trust and Ors. (supra)*** would not apply to the present facts.

In the humble opinion of this Court, the decision rendered by the Hon'ble Supreme Court in case of ***Indian Evangelical Lutheran Church Trust Association (supra)*** was also not to help the cause of

appellants in the present facts. In all possible situations, it may not be universally possible to accept that the "right to sue" was to be treated as synonymous to the "cause of action". The "cause of action" in simple term, is single fact which is required to be pleaded and proved by the plaintiff in order to succeed, whereas in view of the settled position of law right from the decision of ***Mt. Bolo's case (supra)***, the "right to sue" accrues only and only with the unequivocal infringement of right set up by the plaintiff in the suit and not otherwise.

[17] Furthermore, in the considered opinion of this Court, the contention raised on behalf of the appellants-defendants that the respondent No. 1-plaintiff having previously availed multiple proceedings in relation to the dispute in hand adversely affected the maintainability of the present suit, is devoid of merits for the following reasons:-

(a) CWP No. 25534 of 2021 assailing the validity of Lok Adalat's Award dated 09.12.2016 was disposed off primarily on the ground of delay and laches; which doctrine applies to the writ jurisdiction, however, the proceedings in the Civil Suit are governed by the provisions of Limitation Act, 1963 and thus, the decision dated 09.04.2025 in the Writ Petition does not affect the rights of respondent No. 1-plaintiff regarding the maintainability of the suit;

(b) Dismissal of Execution Application No. 126 of 2022 by the learned Executing Court, Gurugram qua the Lok Adalat's Award dated 24.08.2022 was on the point of its maintainability and the merits of the claim were never touched even. Further, the order dated 13.07.2023 passed in the two Civil Revision 33 of 2023 and CR No.

858 of 2023 been upheld by the Hon'ble Apex Court vide its order dated 06.02.2024 (Annexure A-27) in Special Leave to Appeal (C) No. 21462 of 2023 titled as "***MGF Developments Ltd. Versus Cosmo Propbuild Pvt. Ltd. and Ors."*,** was also not fatal to the cause of respondent No. 1-plaintiff for the reason that in its order dated 06.02.2024, the Hon'ble Supreme Court even went on to direct the First Appellate Court to dispose off the appeal bearing CMA-283/2023 filed at the instance of respondent No. 1-plaintiff against rejection of its interim injunction application by the learned trial Court vide order dated 16.10.2023, thereby acknowledging the pendency of the Civil Suit No. 2886 of 2022, which is subject matter of the revision petition; and

(c) The rejection of application under Order XXIII Rule 3A (wrongly mentioned as Rule 3), by the learned trial Court in Civil Suit No. 2536 of 2016 was approved by this Court in Civil Revision Nos. 33 & 858 of 2023, vide order dated 13.07.2023.

DECISION

[18] Moreover, power and scope of Order VII Rule 11 of CPC being hedged with the condition that the adjudication upon serious and contested issue in a suit about the truth and falsity of the averments necessitating oral and documentary evidence in detail, need not to be dealt with at this threshold stage. Accordingly, in view of the detailed discussion made hereinabove, respondent No. 1-plaintiff cannot be thus left remediless at this stage by rejection of its plaint, prematurely; the present appeal being devoid of merit, is therefore **dismissed**. However, any observation made

hereinabove is only for the purpose of adjudication of the present appeal and would not be binding during the further course of trial in the suit.

[19] Pending miscellaneous application(s), if any, shall also stand disposed off.

September 24, 2025 **(HARKESH MANUJA)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes*
Whether Reportable	*Yes*